



CHAIRMAN

Federal Communications Commission

Washington, D.C.

March 2, 2005

02-278

The Honorable Russ Feingold
United States Senate
506 Hart Senate Office Building
Washington, D.C. 20510

RECEIVED

MAR 11 2005

Federal Communications Commission
Office of the Secretary

Dear Senator Feingold:

Thank you for your February 2, 2005 letter regarding the Commission's rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA"), and the Consumer Bankers Association's Petition for Declaratory Ruling on Preemption of Wisconsin Telemarketing Rules.

The Commission adopted rules establishing a national do-not-call registry and other amendments to its telemarketing rules in a *Report and Order* that it released on July 3, 2003. In establishing the national do-not-call registry, we recognized that states traditionally have had jurisdiction over intrastate calls, while the Commission has had jurisdiction over interstate calls. However, Congress enacted Section 227 and amended Section 2(b) of the Communications Act of 1934 to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. Congress did so based upon the concern that states lack jurisdiction over interstate calls. In the *Report and Order*, the Commission also noted that, although Section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations.

Therefore, the Commission concluded that any state regulation of interstate telemarketing calls that differs from Commission rules almost certainly would conflict with and frustrate the federal scheme, and almost certainly would be preempted. We indicated that the Commission will consider any alleged conflicts between state and federal requirements and the need for preemption, on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with Section 227 or our rules may seek a declaratory ruling from the Commission. We reiterated the interest in uniformity – as recognized by Congress – and encouraged states to avoid subjecting telemarketers to inconsistent rules.

The Commission has received six petitions for declaratory ruling seeking preemption of certain state telemarketing laws. These petitions currently are under review and pending before the Commission. We have placed a copy of your correspondence in the public record for these proceedings, and will consider your views carefully along with the record developed in the proceeding.

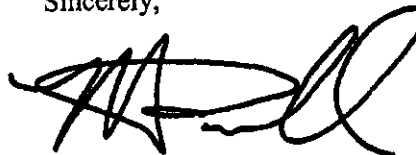
No. of Copies rec'd
List ABCDE

2

Page 2—The Honorable Russ Feingold—March 2, 2005

I appreciate your comments and support for the federal do-not-call list. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael K. Powell", with a large, stylized loop at the end.

Michael K. Powell

RUSSELL D. FEINGOLD
WISCONSIN

506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5323
(202) 224-1280 (TDD)
rfeingold@senate.gov

COMMITTEE ON THE JUDICIARY
COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON THE BUDGET
SPECIAL COMMITTEE ON AGING
DEMOCRATIC POLICY COMMITTEE

United States Senate

WASHINGTON, DC 20510-4904

February 2, 2005

Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

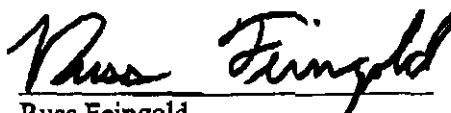
Dear Commissioners:

Since the National Do Not Call Registry was established in June 2003, it has been overwhelmingly popular and effective in reducing or in some cases even eliminating unwanted phone solicitations. One year after the Do Not Call Registry was established, 62 million phone numbers had been registered, with over 80% of those registered reporting fewer phone calls according to public surveys. In addition, the FCC and FTC took civil actions last year against violators of the Registry in an effort to ensure compliance with this important consumer protection.

I continue to be concerned, however, about one aspect of the Do Not Call Registry. In August 2003, I joined with Senator Kohl and Representative Baldwin in a letter expressing concern that the National Registry not preempt state do-not-call laws. As you know, several states have also responded to the annoyances of telemarketing by establishing statewide "do-not-call" lists. Wisconsin has a tough do-not-call list that has enjoyed widespread popularity with my constituents. I write to urge you to ensure that the federal list – which I wholeheartedly support – does not undermine Wisconsin law that regulates interstate telemarketing calls. Specifically, the Wisconsin law does not allow for an "existing business relationship" exception permitted under the federal rule. Understandably, state government officials in Wisconsin are concerned that their tougher state law will be superseded by federal regulatory action.

With nearly 1.5 million phone numbers – representing 80% of the state's residents -- enrolled under the state no-call law, Wisconsin's residents sent a clear message that privacy and not being interrupted by unsolicited phone calls were important to them. This desire was challenged on November 19, 2004, when the Consumer Bankers Association filed a petition for declaratory ruling asking the FCC to preempt Wisconsin's no-call law. I respectfully urge you to reject the Consumer Banking Association's petition and preserve Wisconsin's stronger protections with respect to interstate calls.

Sincerely yours,



Russ Feingold
United States Senator

2 FEB 2005 RCUD

○ 1500 ASSEN COMMONS
ROOM 100
MILWAUKEE, WI 53562
(608) 628-1200
(608) 628-1215 (TDD)

○ 517 EAST WISCONSIN AVENUE
ROOM 400
MILWAUKEE, WI 53202
(414) 278-7282

○ 401 5TH STREET
ROOM 410
WAUSAU, WI 54403
(715) 848-5660

○ 425 STATE STREET
ROOM 225
LA CROSSE, WI 54601
(608) 782-5885

○ 1640 MAIN STREET
GREEN BAY, WI 54302
(920) 465-7508

PRINTED ON RECYCLED PAPER



**FROM THE OFFICE OF
U. S. SENATOR RUSSELL FEINGOLD**

ph: (202) 224-5323

fax: (202)224-2725

webpage: //feingold.senate.gov/

DATE: 2.2.05

TO: Office of the Secretary

Federal Communications Commission

fax: (202)418-7559

FROM: Mike Schmidt

Total Pages (including this cover page): 2